

NATIONAL ADVISORY COMMITTEE FOR AERONAUTICS.

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TECHNICAL MEMORANDUM 90

PROPOSED AIR TRAFFIC LAW.

By Prof. Georges Ripert, of the Paris College of Law
and the School of Political Science.

From "Premier Congrès International de
la Navigation Aérienne," Paris, November, 1921, Vol. I.

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PROPOSED AIR TRAFFIC LAW.*

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Scientific experiments and sporting activities have been followed by commercial exploitation. The important cities of Europe are connected by regular aerial navigation service. The "Indicateur Aerien" gives the time schedules, the transportation rates and the conditions for the acceptance of merchandise shipments. But when all these aircraft have left the ground, what law is going to control them, their crews and their passengers in this new domain which human intelligence has conquered?

Let us not imagine that, in overcoming the physical laws which seemed to hold him to the ground, man can thus easily evade juridical laws. The law of the country does not abandon him in these ethereal spaces, for every country has extended its frontiers to the sky and claims "complete and exclusive sovereignty over the atmospheric space above its territory.**

Moreover, the flights are of short duration and every time the aviator renews contact with the ground, he returns to the

* From "Premier Congrès International de la Navigation Aérienne," Paris, November, 1921, Vol. I, pp. 171-179.

This bill has been referred to the "Commission de la Société d'Etudes législatives" (Committee of the Society for Legislative Research), composed as follows: Mr. Fabry, counselor to the Court of Cassation, president; Messrs. Dufourmantelle, Imbrecoq, Henri Fabry, Léon Jacob, Martin, Pierrot, Rolland, Lumien, Talamon; Mr. Georges Ripert, chairman and Mr. René Capitant, secretary.

** International convention of October 13, 1919, for the regulation of aerial navigation, Art. 1: "The high contracting parties recognize that each power has complete and exclusive sovereignty over the atmospheric space above its own territory."

juridical community which, for the moment, he may have thought he had left.

It is just because it cannot escape the law that aviation demands its due. It has today only an administrative set of regulations* and the subsidies accorded by the government.** There is no aviation code of law.

It is a curious fact, however, that international law has here preceded the elaboration of internal law. An international convention signed October 13, 1919,*** by the representatives of 32 countries "animated with the desire to aid the development of international aerial communications for peace purposes"**** has established general rules relating to the nationality of aircraft and to the admission of aircraft over foreign territory. It cre-

* Decree of July 8, 1920, regulating air traffic in France (Journal officiel, July 13, Bulletin de la Navigation Aérienne, No.7). Decree of Aug. 14, 1920, fixing the conditions for the issuance of aircraft navigability certificates (Journal officiel, Aug. 14, Bulletin No.6). Decree of April 14, 1920, establishing registration rules and the distinctive marks to be borne by aircraft (Journal officiel, Aug. 14, Bulletin No.6). Bulletin of Aug. 26, 1920, regulating air traffic, beacons and signals (Journal officiel, Aug. 28, Bulletin No.6). Decree of Sept. 18, 1920, relating to licenses of the navigating personnel of civil aeronautics (Journal officiel, Sept. 24, Bulletin No.7). Decree of Sept. 30, 1920, establishing rules for keeping the books on aircraft (Journal officiel, Oct. 5, Bulletin No.8). Decree of Jan. 12, 1921, establishing the customs rules to be observed by aircraft landing in or leaving France (Journal officiel, Jan. 18, Bulletin No.11). Decree of June 10, 1921, regulating the transportation and use of photograph and kinetograph cameras on aircraft. Decree of June 10, 1921, repealing previous regulations relating to forbidden zones.

**Budget of April 30, 1921, Art. 88.

*** The law of Jan. 29, 1921, authorized the ratification of the convention. It was completed by an additional protocol May 1, 1920, which was ratified July 15, 1921.

****Preamble of the convention.

ated an international air traffic commission.* Annexes to the convention regulated air traffic in detail.

It would be very illogical, now there is an international convention, not to have an internal law. Hence, the government took the initiative on March 25, 1920, in introducing a bill on air traffic.** It amended this bill by a second, designed to be incorporated in the first. This bill has been examined by the commission, but I cannot say that it was a satisfactory guide, since it was both incomplete and disconnected. Though rich in penal regulations, it is very incomplete in the civil code of aviation. It would appear to threaten more than encourage.*** On the other hand, inspired by previous decrees, it has maintained the general progress of police regulation. This bill was, however, voted by the chamber of deputies on the recommendation of Mr. Bazire, in July, 1921. Foreign legislation does not yet offer any satisfactory model.****

* This commission was placed under the authority of the Society of Nations (Art. 34).

** The articles of this bill are referred to by the abbreviation Pr. ("projet," bill).

***"The original characteristic of this bill," writes Deputy Bazire in his report, "resides especially in its being a collection of penalties, which enable quick repression of law infringements."

****Great Britain.-- Law of March 1, 1919, which enabled the regulation of air traffic by decree.

Belgium.-- Decree of Nov. 27, 1919, supplemented by a departmental decree adopting the regulations of the international convention.

Italy.-- Decree of Nov. 27, 1919.

Spain.-- Decree of Nov. 5, 1919, on air traffic; decree of April 27, 1920, on rules relating to pilots, observers and mechanics of the civil air service; decree of April 17, 1920, on foreign aviators in Spain; decree of March 6, 1920, on registration of aircraft.

Switzerland.-- Decree of the federal council, Jan. 27, 1920, on air traffic regulation in Switzerland.

Holland.-- Decree of Sept. 7, 1920, on air traffic.

Colombia.-- Decree of March 15, 1920, on the regulation of aviation.

In most countries, the rules adopted are simple administrative measures relating to air traffic and chiefly copies of the measures of the international convention. The decree of the Swiss federal council of January 27, 1930, however, contains certain remarkable provisions.

It is therefore necessary to draw up (without the authority of tradition nor the example of a foreign law) a law suited to the new form of commercial exploitation. This is all the more difficult, because a good law must not only satisfy the requirements of the time, but also make suitable provision for the future development of aviation. When we search in the juridical world for laws which may serve us as a basis, we are immediately led to think of maritime law.

The words themselves suggest the comparison. The vehicle bears the name of aircraft and its flights are called aerial navigation. These words are no misnomers. Like the ship, the aircraft has an individuality and a nationality of its own. It carries with it a small colony of pilots and passengers. It constitutes the territory of a small community. The one who guides it must have special rights and duties. He is not only an officer, but also a chief. The aircraft, its crew, its passengers and freight run a common risk which may prove dangerous for them and others. All these conditions are the very ones which have created maritime laws.

There is, however, a difference, which cannot be disregarded

Sea and land are in some sort on the same plan and the ship never leaves its element. The aircraft flies above the ground and there are people and property on the ground. Thus there are two juridical worlds superposed. On the other hand, an aircraft returns to the ground and there becomes an inert or rolling vehicle. Instead of comparing it with a ship, would it not therefore be fairer to liken it to an automobile and subject it to terrestrial laws, since, after flight, it comes back to rest and renew its strength on the ground?

I do not think that such a conception could give aviation the law it requires. In my opinion, only a constant comparison with maritime law, with necessary modifications, can make it possible to state and solve the problems. Naturally, we must not expect to copy an aerial law from a maritime law, which has been elaborated by long centuries of work and which is enacted for a perfected system of navigation. But there was a time when maritime voyages were only made along the coast and when boats were pulled up on dry land after their return to port. At that time, the whole maritime law consisted of but a few very simple rules. Such is the aircraft of today, which returns to earth after a short flight and such are the present aerial laws, taking into consideration the progress of juridical science. Soon aircraft will remain in the air for days at a time and will make distant voyages. Then aerial laws will be improved and will presumably

become more and more like maritime laws.*

PART I.**

A i r c r a f t.

Chap. 1. General Provisions.

Art. 1. - The present law applies to all machines capable of lifting themselves or circulating in the air (Pr. Art 2).

Art. 2. - Military and government aircraft, exclusively assigned to public service, are only subject to the laws relating to the responsibility of the proprietor or the exploiter (Pr. Art. 2; Conv. Art. 30 and 31).

Art. 3. - Every aircraft must be entered in a register, kept by the department in charge of the air service. It is distinguished by a name or number and by the designation of the class to which it belongs (Pr. Art. 3; Conv. Art. 10). A decree will designate the classes of aircraft which are not required to register (Pr. Art. 9).

Chap. 2. Nationality of Aircraft.

Art. 4. - An aircraft entered in the French register has the French nationality and must carry symbol of this nationality according to regulations (Pr. Art. 1 and 3; Conv. Art. 6 and 10).

* Does it not thus come under fluvial law? In countries where fluvial law is important (Belgium, Holland, Germany), river and canal transportation are governed by maritime law or rules based on this law.

** The abbreviation "Pr." refers to the proposed law voted by the Chamber of Deputies; "Conv." to the convention of October 13, 1919.

Art. 5.- No aircraft can be registered in France unless it belongs entirely to Frenchmen (Pr. Art. 3; Conv. Art. 7, par. 1).

Only French companies can be registered as the proprietors of aircraft. Moreover, in partnerships, all the persons associated by name and all silent partners and, in stock companies, the president of the administrative council, the manager and at least two-thirds of the directors must be French (Pr. Art. 3; Conv. Art. 7, par. 2).

Art. 6.- An aircraft registered in France loses its French nationality, if the conditions of Art. 5 are not fulfilled or if its proprietor has it registered in a foreign country (Pr. Art. 3).

Art. 7.- Any aircraft registered in a foreign country can be entered in the French register only after the erasure of its entry on the foreign register (Pr. Art. 3; Conv. Art. 8 and 9).

Art. 8.- Aircraft of foreign nationality cannot fly over French territory unless the right is accorded them by a diplomatic convention or if they receive authorization, which must be special and temporary (Pr. Art. 1; Conv. Art. 5).

Art. 9.- The commercial transportation of passengers and freight between different points on French territory and between France and the French colonies is reserved to French aircraft, with the privilege of according special and temporary concessions by decree (Conv. Art. 16 and 17)...

Art. 10.- The juridical relations between passengers on a foreign aircraft in flight are governed by the law of the country of

the aircraft, whenever such law is normally competent.

However, in case of a crime committed on a foreign aircraft, French courts are competent, if the author or the victim is of French nationality, or if the aircraft lands in France after the commission of the crime (Conv. Art. 32 and 33).

Chap. 3. Ownership and Mortgaging of Aircraft.

Art. 11. - The register gives the name and address of the owner of the aircraft, the type of machine and its name or number.

Art. 12. - Aircraft are personal property for the application of the laws of the civil code, but the cession of property must be confirmed in writing and only affects third parties by being entered in the register.

Every property transfer, by decrease or otherwise, must be recorded in the register at the request of the new proprietor.

Art. 13. - Registrations are public property and any one may obtain a certified copy.

Art. 14. - Aircraft may be mortgaged. The mortgage is recorded in the register. The law of July 5, 1917, on fluvial mortgages has been declared applicable to aircraft mortgages, the official who keeps the register being substituted for the registrar of the tribunal of commerce for this purpose.

Chap. 4. Seizure and Sale.

Art. 15. The seizure and forced sale of an aircraft are made as provided by the law of July 5, 1917, on the registration and mortgaging of river boats, and the record of the proceedings is

always entered in the register.

Art. 16.- In case of seizure for infringement of a patent, the proprietor of the foreign aircraft, or his representative, may obtain a release on depositing a bond, the amount of which, in default of mutual agreement, is fixed with the least possible delay by the justice of the peace of the place of seizure (Pr. Art. 16; Conv. Art. 18).

Art. 17.- When the proprietor of the aircraft is not domiciled in France, or when the aircraft is of foreign nationality, any creditor has the right to make a seizure with the authorization of the justice of the peace of the canton where the aircraft has landed. The judge may grant a withdrawal of the seizure, if the proprietor offers to deposit a bond equal to the amount of the indebtedness claimed, and he can order such withdrawal, on fixing the amount of the bond, in case of dispute over the amount of the debt (Pr. Art. 39).

Art. 18.- The public authorities have the right to seize any French or foreign aircraft which does not fulfill the conditions provided by law, or of which the pilot has committed an infraction.

An aircraft can be confiscated only in cases provided by law (Pr. Art. 39).

PART II.

A i r T r a f f i c.

Chap. 1. Right of Circulation.

Art. 19.- Aircraft may circulate freely above French territory, excepting for the reservations of Art. 8 (Conv. Art. 5).

However, the right for an aircraft to fly over property cannot be exercised under conditions such as to interfere with the rights of the proprietor.

Art. 20.- Flight over certain portions of French territory may be prohibited by decree for military reasons. The location and extent of the forbidden zones must be definitely indicated by the decree.

Any aircraft which enters a forbidden zone is required, as soon as it becomes aware of the fact, to give the proper signal and land on the nearest airdrome outside the forbidden zone (Pr. Art. 10; Conv. Art. 3 and 4).

Art. 21.- An aircraft may fly over a city or town only at such an altitude that it would always be possible to land outside the city or town or on a public airdrome, even if the engine should stop (Pr. Art. 20).

Art. 22.- All acrobatic stunts, consisting of perilous and useless evolutions, are forbidden above cities or the part of an airdrome open to the public (Pr. Art. 20, par. 3).

Art. 23.- Evolutions of aircraft for public exhibition can occur only with permission of the chief of police after consulta-

tion with the mayor.

If the test consists of a trip including several successive landings, the permission is given by the Minister of the Interior (Pr. Art. 19).

Chap. 2. Landing and Airdromes.

Art. 24.- Except in cases of urgent necessity, aircraft must land only on airdromes open to the public (Pr. Art. 4; Conv. Art. 24).

Art. 25.- In case of landing on private property, the owner of the land cannot oppose the departure or removal of an aircraft, the seizure of which has not been ordered.

Art. 26.- An airdrome is any field specially prepared for the departure and landing of aircraft and designed to serve air traffic either in a public or private capacity.

Art. 27.- Public airdromes are created by the central government, the "departments" (counties) or the "communes" (townships).

Departmental and communal airdromes can only be established with the authorization of the minister in charge of the air service and they are subject to the surveillance of government agents (Pr. Art. 4; Conv. Art. 24).

Art. 28.- Fields to be acquired for the establishment of public airdromes may be the object of a declaration of public utility by decrees rendered in the form of public administrative regulations (Pr. Art. 41).

Art. 29.- An airdrome may be established by the owner of the

field only by administrative permission.

The permit may specify that the airdrome must be open to all aircraft, in which case it will fix the rent to be paid the owner of the land. The permit may be withdrawn, if the conditions are not observed (Pr. Art. 4).

Art. 30.- Aircraft which cover international routes must take off from and land on special airdromes, termed frontier airdromes. In crossing the frontier, they must follow a route determined by the administrative authority (Pr. Art. 14, Conv. Art. 15, par. 2).

Certain types of aircraft may, by reason of the nature of their work, be excused from landing on the frontier airdromes. The permit designates, in this case, the airdrome of arrival and departure, the route to be followed and the signals to be given on passing the frontier.

Chap. 3. Air Traffic Police.

Art. 31.- The commander, pilots, mechanics, and all other persons connected with the operation of an aircraft must have licenses under conditions determined by ministerial decree.

Licenses of commanders and pilots of French aircraft making international trips can only be granted to Frenchmen (Pr. Art. 8, Conv. Art. 12 and 13).

Art. 32.- No aircraft can engage in air traffic, unless it has been registered and is provided with a navigability certificate, issued after inspection of the machine, under conditions determined by ministerial decree.

The decree will further determine the pieces to be carried on the aircraft and the marks to be painted on it (Pr. Art. 6, 7 and 9, Conv. Art. 11, 19 and 20).

Art. 33.- Without special authorization, aircraft are forbidden to carry explosives, arms and war munitions, homing pigeons and objects of correspondence comprised in the postal monopoly.

Transportation and use of photograph cameras may be forbidden by ministerial decree (Pr. Art. 11, Conv. Art. 26 to 29).

Art. 34.- No radio instrument can be installed on an aircraft without special permission.

Aircraft assigned to a public passenger transportation company must be provided with radio instruments under conditions to be fixed by decree.

In every instance, men assigned to radio service must be provided with special licenses (Pr. Art. 12, Conv. 14).

Art. 35.- Every aircraft, landing on an airdrome is subject to inspection and surveillance by the administrative authorities (Pr. Art. 13, Conv. Art. 21).

Art. 36.- Every aircraft in circulation, wherever it may be, must submit to the orders of the post office department and to the police and customs aircraft, under whatever form such orders may be given (Pr. Art. 13, Conv. Art. 15, par. 1).

Art. 37.- Aircraft flying exclusively over airdromes and regions assigned by administrative authorities as experiment fields are not subject to the conditions required by law for air traffic.

They cannot, however, carry passengers, unless provided with navigability certificates (Pr. Art. 21).

Art. 38.- Certificates of navigability and licenses, issued by the government whose nationality the aircraft possesses, are honored for flight above French territory, if the equivalent has been allowed by international convention or by decree.

PART III.

A i r T r a f f i c .

Chap. 1. Transportation of Merchandise.

Art. 39.- A contract for carrying freight is confirmed by a way-bill or receipt. This document must contain, in addition to the stipulations of Art. 102 of the "Code de Commerce," the statement that the shipment is to go by air.

Art. 40.- The carrier must fill out a manifest, designating the nature of the merchandise carried. A duplicate of the manifest must be carried on the aircraft and must be shown on demand to agents of the traffic police and to customs agents.

Art. 41.- The carrier is responsible for loss or damage of goods carried, aside from acts of Providence or defects inherent in the goods.

If, however, the value of the goods is not declared by the shipper, the responsibility of the carrier is limited to 1000 francs for each package.

Art. 42.- The carrier may, by a special clause, free himself from the responsibility otherwise devolving on him by reason of

the risks of the air and of errors committed by the crew.

This clause relieves the carrier of responsibility, only on condition that the aircraft is in good navigable condition on starting. The administrative certificate carries a presumption of navigability, which may, however, be overthrown by proof to the contrary.

Art. 43.- All clauses are null, whose object is to relieve the carrier of responsibility for himself or his subordinates, in loading, storing and delivering goods.

Art. 44.- The commander has the right to have the merchandise thrown overboard during the trip, if it is necessary for the safety of the aircraft. If a choice is possible, he must throw overboard merchandise of small value. No responsibility devolves on the carrier, toward the shipper and addressee, for this loss.

Art. 45.- With the preceding exceptions, the rules of the "Code de Commerce," relating to transportation by land and water, apply to transportation by air.

Chap. 3. Passengers.

Art. 46.- The contract for carrying a passenger must be confirmed by the issuance of a ticket.

A list is made of the names of the passengers, a duplicate of which must be kept on the aircraft and communicated on demand to agents of the traffic police.

This does not apply, however, to round non-stop flights back to the airdrome of departure.

Art. 47.- For international transportation, the carrier can only accept passengers, after making sure that they are regularly authorized to land at the point of destination or intermediate stations.

Art. 48.- The carrier may relieve himself of responsibility for accidents to the passengers in accordance with the provisions of Art. 42.

Chap. 3. Renting Aircraft.

Art. 49.- In case an aircraft is rented for several successive trips and for a given period of time, the commander, pilot and crew remain, except on agreement to the contrary, under the orders of the owner of the aircraft.

Art. 50.- The owner of an aircraft let to a third party remains subject to the legal requirements and is held responsible, together with the renter, for their violation.

However, if the renting contract is recorded in the register and if the renter fulfills the required conditions for French aircraft, he is alone held responsible for fulfilling the legal obligations.

PART IV.

Responsibility for Damages.

Art. 51.- Pilots are expected to conform to the regulations with reference to the air traffic police, to the route, to the lights and signals and to take all necessary precautions for avoiding accidents.

Art. 52.- In case of damage done by an aircraft in flight to another aircraft in flight, the responsibility of the pilots and of the owner of the aircraft is regulated in conformity with the provisions of the civil code (Pr. Art. 5, par. 2).

Art. 53.- The owner of an aircraft is responsible for damages caused by the evolutions of an aircraft, or by objects becoming detached from it, to persons or property on the ground.

This responsibility can be escaped only by proving the fault of the victim (Pr. Art. 5).

Art. 54.- It is forbidden to throw from an aircraft in flight except for urgent reasons, any objects whatsoever, with the exception of the regular ballast (Pr. Art. 15, par. 2).

In case objects or the regular ballast, thrown out by necessity, cause injury to persons and property on the ground, the responsibility will be regulated in accordance with the provisions of the foregoing article (Suisse, Art. 22).

Art. 55.- In the case of a rented aircraft, the owner and the renter are jointly responsible toward third parties for damages inflicted (Suisse, Art. 26).

However, if the renting is recorded in the register, the owner is responsible, if the third party proves fault on his part.

Art. 56.- The suit for damages may be brought, at the option of the plaintiff, either before the court of the town where the damage is done, or before the court of the town where the defendant resides.

If it is an injury done an aircraft in flight, the court of the place of injury is the one within the jurisdiction of which the victim is obliged to land after the injury (Suisse, Art. 32).

Art. 57.- The law of April 39, 1916, on maritime assistance and salvage applies to aircraft in peril at sea and to the pilots of aircraft who can lend assistance to persons in peril (Pr. Art. 17 and 18, Conv. Art. 22 and 23).

Art. 58.- Any one who finds the wreck of an aircraft must report it to the municipal authorities within 48 hours of its discovery. Any infraction of this requirement is subject to the penalties in Art. 475, par. 12, of the penal code (Pr. Art. 18).

The rules regarding maritime wrecks apply only to aircraft found on the sea or seacoast (Conv. Art. 23).

Art. 59.- In case of the disappearance of an aircraft without news, it is considered lost three months after the date of the dispatch of the last news.

The death of the persons on an aircraft may, after the expiration of this period, be declared by the application of the law of January 8, 1893.

PART V.

Penalties.

(Under this head, there will be inserted the penal provisions in the legislative bill drawn up by the government.)

Translated by the National Advisory Committee for Aeronautics.

